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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, NOVEMBER 14, 2000

COMMONWEALTH OF VIRGINIA, EX REL.
STACY A. SNYDER, ET AL.

v.

CASE NO. PUE000586

VIRGINIA GAS PIPELINE COMPANY

In Re: Motion to reinstate the
Commission's docket in Case No.
PUE990167, and reconsider, and/or
vacate the Commission's final order
in that case granting Virginia Gas
Pipeline Company a certificate

ORDER

Background

On March 19, 1999, Virginia Gas Pipeline Company ("VGPC" or "the Company") filed an application with the Virginia State Corporation Commission ("Commission") pursuant to the Utilities Facilities Act (§ 56-265.1 et seq.), Chapter 10.1 of Title 56 of the Code of Virginia, requesting a certificate of public convenience and necessity to construct, own, and operate a natural gas transmission pipeline system and related facilities to provide an additional throughput of 21,500 dekatherms of gas per day. The proposed pipeline would be an expansion of VGPC's existing P-25 pipeline system, which now runs from Chilhowie, Virginia, to Radford, Virginia.¹

VGPC proposed to extend the line from Radford into Roanoke County, Virginia, and to construct laterals to Rocky Mount, Virginia, and into the City of Roanoke. The Company stated that the project would total approximately 57.4 miles and would connect VGPC's facilities with

markets further east. The proposed transmission pipeline would pass through the distribution territories of United Cities Gas Company and Roanoke Gas Company and would provide natural gas transportation service only.

In an order entered on April 15, 1999, the Commission directed the Company to give notice of its application and to provide the public with an opportunity to comment and request a hearing. The order specifically directed VGPC to publish notice of the application in newspapers in the areas through which the pipeline was proposed to be constructed. The Company was further directed to serve a copy of the April 15, 1999, Order on the chair of the board of supervisors of any county and upon the mayor or manager of any county, city, or town (or upon equivalent officials in counties, towns, and cities having alternate forms of government) lying within the area in which VGPC proposed to construct the pipeline. The Commission also directed its Staff to file a report detailing its findings and recommendations on or before July 16, 1999.

The Company published notice of the application on May 5, 1999, in The News Messenger/News Journal and The Franklin News-Post, and on May 6, 1999, in The Southwest Times and The Roanoke Times. The notice stated, in pertinent part:

NOTICE TO THE PUBLIC OF AN APPLICATION BY
VIRGINIA GAS PIPELINE COMPANY FOR A
CERTIFICATE OF PUBLIC CONVENIENCE AND
NECESSITY TO CONSTRUCT, OWN AND OPERATE
A NATURAL GAS TRANSMISSION PIPELINE
SYSTEM AND RELATED FACILITIES
CASE NO. PUE990167

On March 19, 1999, Virginia Gas Pipeline
Company ("VGPC" or "the Company") filed an application
with the State Corporation Commission ("Commission")

¹ The existing P-25 pipeline from Chilhowie to Radford, Virginia, was approved by the Commission in Case No. PUE970024.

requesting the Commission to issue a certificate of public convenience and necessity authorizing VGPC to construct, own and operate a natural gas transmission pipeline system and related facilities to provide an additional throughput of 21,500 dekatherms of gas per day. The proposed pipeline is an expansion of VGPC's existing P-25 pipeline system from Chilhowie, Virginia, to Radford, Virginia.

VGPC proposes to extend the line from Radford into Roanoke County, Virginia, and to construct laterals to Rocky Mount, Virginia, into the City of Roanoke. The Company states that the project will total approximately 57.4 miles and will connect VGPC's facilities with markets further east. . . The proposed transmission line passes through the distribution territories of United Cities Gas Company and Roanoke Gas Company and will provide natural gas transportation service only.

Interested persons are encouraged to review VGPC's application and supporting documents for the details of all proposals found in the application . . .

Copies of VGPC's application are available for public inspection during regular business hours at VGPC's office at 200 Main Street, Abingdon, Virginia 24210, during the hours of 9:00 a.m. to 5:00 p.m., Monday through Friday. The application is also available for public inspection Monday through Friday, 8:15 a.m. to 5:00 p.m. at the State Corporation Commission, Document Control Center, First Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia 23219.

Any person desiring to comment in writing on VGPC's application or request a hearing may do so by directing such comments or requests on or before May 28, 1999, to Joel H. Peck, Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218 and shall refer to Case No. PUE990167. . .

If no requests for hearing are received, a formal hearing with oral testimony may not be held and the Commission may make its decisions administratively, based upon papers filed in this proceeding.

The Company also served a copy of the April 15, 1999, Order on the Chairs of the County Board of Supervisors of Pulaski, Montgomery, Roanoke, and Rocky Mount, on the Mayors/Managers of Pulaski County, Montgomery County, Roanoke County, Rocky Mount, and the City of Roanoke, on the County Administrator for Franklin County, and on the Directors of the Virginia Department of Conservation and Recreation, and the Virginia Department of Environmental Quality ("DEQ").

On May 28, 1999, following publication of the first notice, Atmos Energy Corporation d/b/a United Cities Gas Company ("United Cities"), filed comments and requested a hearing on the application. However, before the Commission could act on United Cities' filing, it withdrew the request for hearing.

On July 14, 1999, the Company filed a modification to its proposed route into Rocky Mount, Virginia. The modification was made pursuant to the Department of Conservation and Recreation's recommendation that several natural area preserves were in danger of being disturbed by the construction of the proposed pipeline.

On July 15, 1999, the Staff of the Commission ("Staff"), by its counsel, filed a motion requesting an extension of time to file its Report in order to give it additional time to review the modification to the application. The Commission granted the Staff's motion, and directed the Company to publish and serve notice of the change in the application. The Company published the second notice on August 10, 1999, in The Southwest Times and The Roanoke Times and in The News Messenger/News Journal and The Franklin News-Post on August 11, 1999. The second notice stated, in pertinent part:

NOTICE TO THE PUBLIC OF A CHANGE IN THE
APPLICATION OF VIRGINIA GAS PIPELINE
COMPANY FOR A CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY TO CONSTRUCT,

OWN, AND OPERATE A NATURAL GAS
TRANSMISSION PIPELINE SYSTEM AND RELATED
FACILITIES
CASE NO. PUE990167

On March 19, 1999, Virginia Gas Pipeline Company ("VGPC" or "the Company") filed an application with the State Corporation Commission ("Commission") requesting the Commission to issue a certificate of public convenience and necessity authorizing VGPC to construct, own, and operate a natural gas transmission pipeline system and related facilities to provide an additional throughput of 21,500 dekatherms of gas per day. The proposed pipeline is an expansion of VGPC's existing P-25 pipeline system from Chilhowie, Virginia, to Radford, Virginia.

On July 14, 1999, the Company filed a modification to its proposed route into Rocky Mount, Virginia. That modification will necessitate relocation of the proposed pipeline in two locations and the acquisition of additional rights-of-way, the details of which may be reviewed at the following locations: VGPC's office at 200 Main Street, Abingdon, Virginia 24210, during the hours of 9:00 a.m. to 5:00 p.m., Monday through Friday, and at the State Corporation Commission, Document Control Center, First Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia 23219, during the hours of 8:15 a.m. to 5:00 p.m.

Any person desiring to comment in writing on VGPC's application or request a hearing may do so by directing such comments or requests on or before September 7, 1999, to Joel H. Peck, Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, and shall refer to Case No. PUE990167. . .

The Company served a copy of the July 16, 1999, Order on the Chairs of the County Board of Supervisors of Pulaski, Christiansburg, Roanoke, and Rocky Mount, and the Mayor/Managers of Pulaski County, Montgomery County, Franklin County, Rocky Mount, Roanoke County, and the City of Roanoke.

Staff filed its Report on September 30, 1999. In its Report, Staff recommended that the application be approved. Staff noted that there was sufficient need for gas transportation service to support additional facilities in southwestern Virginia. Staff stated that it believed VGPC has the technical and managerial capability to construct and operate the proposed pipeline but that the operation of the proposed facility was dependent upon the expeditious completion of VGPC's P-25 pipeline into Radford. The Staff encouraged the Company to exercise all deliberate haste in completing that section of its intrastate pipeline. Because Staff remained cautious about the Company's financial outlook, it recommended that the Commission continue to monitor the financial condition of VGPC through the Annual Informational Filing ("AIF") process and future Chapter 3 and 4 filings related to the pipeline expansion. The AIF requires that utilities provide financial data on a total company and Virginia jurisdictional basis reflecting both its per books operations and adjustments to reflect earnings on a regulatory basis. The Commission uses the AIF process as a foundation to monitor the financial condition of utilities that it regulates.

On December 6, 1999, the Commission issued a Final Order in Case No. PUE990167 granting VGPC a certificate to construct, own, and operate a natural gas transmission pipeline system and related facilities. The order grants VGPC Certificate No. GT-69, and dismisses the case from the Commission's docket of active cases.

Current proceeding

On October 5, 2000, Stacy Snyder and a group of landowners purportedly affected by the pipeline expansion ("Petitioners"), filed a "Motion to Reinstate, Reconsider, and/or Vacate" the Commission's December 6, 1999, Order granting VGPC a certificate in Case No. PUE990167. In support of the motion, Petitioners allege: (1) violation of § 56-265.2:1.B of the Code of Virginia, which requires 30 days' advance public notice of the proposed pipeline, (2) violation of

§ 56-265.2:1.C of the Code of Virginia by providing less than 30 days in each notice for requests for hearing on the application, (3) violation of § 56-265.2.A by failing to give "due notice" to interested parties of the application, and (4) the "GRANT OF EASEMENT" form used by VGPC in its right of way acquisition effort does not conform with the rights and privileges granted it by the Commission. On October 17, 2000, Montgomery County filed a motion in support of Petitioners' motion, and on October 23, 2000, Roanoke County filed a similar motion.²

On October 18, 2000, VGPC filed a response to Petitioners' motion requesting that the Commission deny the motion and dismiss the action. In support thereof, VGPC states that according to Rules 8:9 and 8:10 of the Commission's Rules of Practice and Procedure, and Rule 5:21 of the Rules of the Supreme Court of Virginia, the Commission lacks subject matter jurisdiction to entertain Petitioners' motion. On November 2, 2000, Petitioners filed a "Reply and Response" to VGPC's response, countering the jurisdictional arguments made by VGPC. Finally, on November 8, 2000, the Company filed a response to Petitioner's "Reply and Response" to refute assertions made in Petitioners' November 2, 2000, filing.

NOW THE COMMISSION, upon consideration of the Petitioners' motion, the above-referenced responses, and the applicable statutes and rules, is of the opinion and finds that Petitioners' motion must be denied.

Jurisdiction

Although we are not without sympathy for Petitioners' situation, we find that the Commission lacks jurisdiction to reopen this matter. Rule 8:9 of our Rules of Practice and Procedure states: "All final judgments, orders and decrees of the Commission . . . shall remain

² It should be noted that Montgomery County passed a resolution in support of the proposed pipeline on May 11, 1998, and Franklin County also passed a resolution requesting that the Commission approve VGPC's application on April 29, 1998. Roanoke County commented on the environmental impacts of VGPC's application in a letter to the DEQ on May 17, 1999.

under the control of the Commission and subject to be modified or vacated for twenty-one (21) days after the date of entry, and no longer." Even if the order was erroneous, the Commission had jurisdiction to enter it, and, the allotted time for reconsideration having passed, now lacks jurisdiction to modify it. See Reynolds v. Alexandria Motor Bus Line, Inc., 141 Va. 213 (1925) ("Reynolds"). In that case, the Virginia Supreme Court stated:

The order of July 7, 1923, shows on its face that it was a final disposition of the case. It is wholly immaterial whether it was right or wrong. The Commission had dismissed it, and no longer had any jurisdiction over it. . . . The only remedy of the applicant was by appeal to this court of which he did not avail himself within the time prescribed by law. Id. at 228. . . . To allow such a case to be reopened before the Commission after the expiration of the time in which an appeal could be taken would in effect nullify the provisions of the statute requiring appeals from final orders of the Commission to be taken and perfected within six months from the date of such order. Id. at 229. . . . However inadvertent the order may have been, however erroneous, it was not void, and could only have been set aside by an appeal to [the Virginia Supreme Court]. Id. at 230.

In the instant case, the final order granting VGPC a certificate was entered on December 6, 1999. According to Rule 8:9 of the Commission's Rules,³ that order remained under the control of the Commission and was subject to modification or vacation for 21 days, or on or before December 27, 1999. Petitioners' motion was filed more than 300 days after the final order was entered in this case. To allow this case to be reopened would nullify the provisions of our Rules establishing the finality of Commission orders and contradict the Virginia Supreme Court's conclusion that the Commission loses jurisdiction over its orders once the prescribed time period expires.

We therefore must conclude that the Commission lacks jurisdiction to reopen this matter.

³ Adopted subsequent to the decision in Reynolds.

We will address the arguments raised in Petitioner's motion below.

§ 56-265.2.A of the Code of Virginia

We disagree with Petitioners' allegation that the notice failed to comply with § 56-265.2.A of the Code of Virginia, which requires that interested parties receive "due notice" of VGPC's application prior to the Commission's issuance of a certificate. VGPC published notice in all the counties and municipalities affected by the proposed pipeline, provided actual written notice to all appropriate governing bodies, and filed a copy of its plans, specifications and maps with the Commission for inspection by the public. Both notices that were published referred interested parties to VGPC's office or the Commission for review of the details of the application and route of the pipeline. The first published notice identified both the originating point of construction as well as the points to which the pipeline would be extended. The second notice identified the changed route for the lateral into Rocky Mount. The Virginia Supreme Court has held that the notice requirement in § 56-265.2.A of the Code of Virginia "is satisfied with respect to interested parties in a particular county when a notice is published in a newspaper having general circulation in the county and is served on the county's officials, which notice states that a hearing is to be held on the need to construct a utility line between two identified points whose locations readily indicate that the line might traverse the county." Citizens for the Preservation of Floyd County, Inc. v. Appalachian Power Company, 219 Va. 540, 545 (1978) ("Appalachian"). The notices were published in all appropriate newspapers in the affected counties, and copies of the Commission's orders containing the notices were sent to all appropriate governing bodies. The notices published by VGPC clearly identified the points to which the line would be extended, in compliance with the statute and the standard set forth in

Appalachian. We therefore must conclude that the notice complied with § 56-265.2.A of the Code of Virginia.

§ 56-265.2:1.B of the Code of Virginia

We also disagree with Petitioners' allegation that the notice failed to comply with § 56-265.2:1.B of the Code of Virginia. That section states in pertinent part: "The Commission shall not approve construction of any such pipeline unless the public utility has provided thirty days' advance public notice of the proposed pipeline" (Emphasis added.) The Commission's December 6, 1999, Final Order in this case approving the pipeline construction was 117 days after the second notice was published in newspapers. The public had well beyond 30 days notice prior to the approval of the facility. Therefore, we must conclude that our action complies with § 56-265.2:1.B of the Code of Virginia.

§ 56-265.2:1.C of the Code of Virginia

Section 56-265.2:1.C provides that the Commission shall hold a public hearing if any interested party so requests within 30 days after publication of notice. The first notice of VGPC's application was published in newspapers on May 5 and 6, 1999, and stated that interested parties may file comments or request a hearing on the application on or before May 28, 1999, 22 or 23 days after the publication date. The second notice of VGPC's application was published in newspapers on August 10 and 11, 1999, and stated that interested parties may file comments or request a hearing on the application on or before September 7, 1999, 27 or 28 days after the publication date. It appears that Petitioners argue that because of the dates stated in the notice, regardless of how long the Commission waited to enter the final order, the notices were defective, violated the 30-day provision of § 56-265.2:1.C of the Code of Virginia, and the defect and violation deprived the Commission of jurisdiction to enter its order

granting VGPC a certificate. We cannot agree. Interested parties had a cumulative 49 days between both published notices to request a hearing, and the Commission received no requests. Moreover, four months elapsed from the first publication in May and the deadline set in the second notice. Further, a hearing would have been granted had a request been made within 30 days of the publication of either notice; and, upon good cause shown, a hearing would have been granted after the 30-day time period expired but prior to the entry of the final order in this case. Finally, we could have reconsidered the matter if such a request had been received within 21 days of the entry of the final order. However, no interested party requested a hearing on the application until long after the final order was entered on December 6, 1999,⁴ and no party complained in any way until more than 300 days after the final order, and more than 16 months after the first notice was published. We find that § 56-265.2:1.C of the Code of Virginia was not violated because no interested party was denied the opportunity for hearing as allowed by law.

Mt. Crawford

Petitioners raise Commonwealth of Virginia, ex rel. Town of Mt. Crawford v. Virginia Electric and Power Company, In Re: Request of Town of Mt. Crawford for hearing on construction of Transmission Line from West Staunton to Harrisonburg, Case No. 20084, 1979 S.C.C. Ann. Rept. 369, ("Mt. Crawford") as support for its position that the Commission has jurisdiction to reopen this matter. In that case, the Commission re-examined the route of a utility line in the context of a complaint proceeding. The town of Mt. Crawford claimed that the transmission line corridor previously approved by the Commission would pass through the town's corporate limits and that it never received notice of the application as required by the statute. Virginia Electric and Power Company ("VEPCO") responded to the complaint and

⁴ United Cities withdrew its request for hearing on June 22, 1999.

stated, among other things, that the transmission line at issue did not pass through the town's corporate limits. However, without waiving their positions on the location of the utility line and the adequacy of notice, both parties agreed to a hearing before the Commission on the route of the transmission line.

The Mt. Crawford case is distinguishable from this case because it turned on a question of fact that could only be resolved by a hearing, i.e. whether the line crossed into the corporate limits of the town, thereby requiring service of notice on the mayor. If, in fact, the Commission had found in that case that notice was required to be served on the town of Mt. Crawford but had not been made, the question of whether the Commission had jurisdiction to grant a certificate to VEPCO would be raised. Here, by contrast, notice was given to all interested parties in the manner set forth in the statutes.

Alleged Fraud

Finally, Petitioners urge the Commission, pursuant to § 56-265.6 of the Code of Virginia, to revoke the certificate granted to VGPC because they allege it was obtained fraudulently.

Section 56-265.6 states, in pertinent part:

The Commission may, by its order duly entered after hearing, held after due notice to the holder of any such certificate and an opportunity to such holder to be heard, at which hearing it shall be proved that such holder has willfully made a misrepresentation of a material fact in obtaining such certificate or has willfully violated or refused to observe the laws of this State touching such certificate or any of the terms of the certificate, or any of the Commission's proper orders, rules or regulations, impose a penalty not exceeding \$1,000, which may be collected by the process of the Commission as provided by law; or the Commission may suspend, revoke, alter or amend any such certificate for any of the causes set forth above. . .

We find no grounds to revoke VGPC's certificate because of any alleged fraud in its procurement. The certificate granted to VPGC was to construct, own, and operate a natural gas transmission pipeline system and related facilities. If the Company ever seeks to construct facilities other than those approved by the Commission, a further construction certificate may be required. The Commission finds no fraud in the publication or content of the notice given to interested parties by VGPC because, as detailed herein, we find that the notices published were in compliance with the statutes and the case law as established by the Virginia Supreme Court. With respect to Petitioners' allegations concerning the acquisition of what are described as expansive easements, to the extent the Company seeks to acquire such easements by eminent domain, that matter will undoubtedly be addressed by the court with jurisdiction over the condemnation proceeding. Accordingly,

IT IS ORDERED THAT:

- (1) This matter is docketed as Case No. PUE000586.
- (2) Petitioners' October 5, 2000, Motion to Reinstate the Commission's docket in Case No. PUE990167, and Reconsider, and/or Vacate the granting of a certificate to Virginia Gas Pipeline Company is hereby denied.
- (3) This case is hereby dismissed from the Commission's docket of active cases.